HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not apporved for reporting)

(Chapter VIII Rules 32 (2)(b)

Description of the case.

W.P. No. 1034 of 2003 (S/S)
(Old No. 3269 of 1995)

Bhuwan Chandra Sanwal
Vs.
State of U.P. & others

Approved for reporting

Not approved for reporting

Date of decision 17.5.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1034 (S/S) OF 2003
(Old No. 3269 of 1995)

Bhuwan Chandra Sanwal, aged about 28 years, son of Sri late Durga Dutt Sanwal, resident of Almora Hydel Colony, Hatiyari, district Almora. .....Petitioner.

Versus

1. State of U.P., through the Secretary, Uttaranchal/ Hill Development Department, Government of U.P., Civil. Secretariat, Lucknow.
2. Vishesh Karya Adhikari/Joint Secretary, U.P. Government, Uttaranchal/Vikas, Regional office, Kumaon Region Almora.
3. State of Uttaranchal, through Secretary, Planning Department, Uttaranchal Shasan, Dehradun.
4. Additional Secretary, Planning Department, Uttaranchal Shasan Dehradun.
5. Senior Research Officer/Drawing Disbursing Officer, State Planning Commission/planning Directorate, Uttaranchal, Civil Secretariat, Dehradun.

.....Respondents.

Dated: 17.05.2005

Hon'ble Rajesh Tandon, J.

Heard learned counsel for booth the parties.

By the present writ petition the petitioner has prayed for a writ of mandamus commanding the respondents to pay the petitioner's held up salary w.e.f. 1st October, 1992 and further directing the respondents to pay the petitioner's monthly salary and to allow him to continue in service. Further the petitioner has prayed for a writ of mandamus directing the respondents to allow the petitioner to retain his post and remain in services under the respondents and restrain the respondents from terminating the services of the petitioner in any manner and

regularize the services of the petitioner on the available, clear and substantive vacancies of Junior Investigator.

Briefly stated, petitioner's name was found suitable for the post of Investigator which was lying vacant vide letter x2/C/25/90 dated 26.9.90 issued by Regional Employment Office, Almora to this effect an information was sent and petitioner was called for an interview after facing the interview petitioner was offered a job on the post of Research Assistant in the Regional Office of Kumaon Region, Hill Development Department at Almora vide order No. 189/Kumaon Region Ka. Aa.-97/1990 issued on 25th November 1990 and joined on the said post on 1st January, 1991. It was an appointment against a clear permanent vacancy of Junior Investigator (Pay-scale 1200-2040) in the services of Hill Development Department Government of Uttar Pradesh.

It is submitted that vide G.O. dated 17.12.1988, the government of U.P. had granted sanction for establishment of two Regional Offices of Hill Development Department, out of which one was to be established at Almora and the another at Srinagar to look after the development activities in the two Division. It is further submitted that as many as 52 posts in different categories were also sanctioned vide Government Order dated 17.12.1988 for two Regional Offices, out of which 16 were of Junior Investigator. It was provided in the said Government Order that the two Regional Offices shall work directly under the control of Hill Development Department of the state Government. Necessary Budgetary allocation was also made by means of the said Government Order. The posts including that of Junior Investigator created by the State Government vide Government Order dated 17.12.1988 were initially sanctioned up to 28.2.1989 as per the usual practice in

the State Government. The sanction for the said posts, however, was extended from year to year by the State Government and it was lastly extended by the Government of U.P. vide office memo dated 4.10.2000 and thereafter sanction for the post was extended by the Government of Uttaranchal.

Learned counsel for the petitioner has pointed out that the petitioner is still getting salary against the post of Junior Investigator created vide Government Order dated 17.12.1988.

Learned counsel for the petitioner has further submitted that no service rules were framed by the State of U.P. in respect fo the employees serving in the aforesaid two regional Offices controlled by Hill Development Department and thus service conditions of the employees serving therein, were regulated by executive instructions. Even after creation of State of Uttaranchal, no service rules have been framed for the post of Junior Investigator on which the petitioner is serving. Accordingly to the case of the petitioner, he possesses all the requisite qualification for the regular appointment on the post of Junior Investigator (now redesignated as Investigator in the new structure of State Planning Commission/Planning Directorate vide Government Order dated 10.10.2002) as specified in the executive instructions issued by the State Government. At the time of his appointment against the post of Junior Investigator, the petitioner was having Master's Degree in Economics, which was sufficient qualification for regular appointment on the said post.

Since the petitioner was a Post Graduate and was facing great hardship of unemployment, he accepted the job of Junior Investigator as offered by the respondents.

Learned counsel for the petitioner has submitted that according to his qualification, he ought to have been appointed

as research Assistant by the respondents, but he was appointed as a daily wager to work as Junior Investigator on a fixed salary of Rs. 1,000/- per month. It was provided in the appointment order that if the number of villages surveyed by the petitioner remains less than ten he will not be paid any salary and if it remains within 10 to 12 villages, he will be paid only Rs. 500/- per month.

Vide order No.79/28 Prashan Cell- (1) 46/91 dated 1st November, 1991 petitioner was appointed on the post of Junior Investigator on the consolidated pay of Rs. 1500/- per month again for the period of six months. The services of the petitioner again extended for another six months w.e.f. 01.01.1991 to 18.11.1991.

Again services of the petitioner were extended for another six months w.e.f. 09.11.1991 to 30th September, 1992. Thereafter, Authorities concerned assured the petitioner that after getting the approval for the same post from the Government of Uttar Pradesh, he will be paid salary. The petitioner was doing work but he was not being paid the salary.

Petitioner has submitted that he worked more than a year and was assured from time to time by the respondents that when sanction will be obtained he will be paid salary but petitioner was not paid salary for a long spell then petitioner made a representation before opposite party no. 2 to pay his salary but no orders passed upon his representation.

The petitioner has further submitted that the post was never abolished and sanction was made by the Government of Uttar- Pradesh from time to time.

Leaned counsel for the petitioner has submitted that regular selection against these posts have yet not been taken neither regularly selected candidates are available nor regular

selection have been made. Petitioner has worked for more than three years and without any rhyme or reason petitioner has been restrained to come on duties w.e.f. 1st January, 1995. Petitioner moved a representation and requested therein to allow to continue the petitioner to work on the post of Junior Investigator and to pay him salary w.e.f. October, 1992 upto December, 1994 in which period the work was being taken by the petitioner but the salary was not paid.

Petitioner has stated that he continued submitting representations to the Government for regularization of his services on the post of Junior Investigator. There were permanent clear vacancies, but despite petitioner's more than three years continuous service he was not regularized nor was allowed to continue to work w.e.f. 1st January, 1995.

Leaned counsel for the petitioner has submitted that the petitioner served in the department for the last more than 14 years with due honesty and dedication against a duly sanctioned post, however, his claim for regularisation has not been considered despite repeated requests.

It was further submitted that neither any regular selection nor any regular appointment has been made to fill the post held by the petitioner and the post of Junior Investigator (now redesignated as Investigator) is now outside the purview of Public Service Commission. According to the Government order dated 26.03.2003 issued by the Government of Uttaranchal, all posts carrying the pay-scale of Rs. 5500-9000 or below have been taken outside the purview of Public Service Commission. Government of Uttaranchal has sanctioned structure of State Planning Commission/Planning Directorate, Uttaranchal vide Government Order dated 10.10.2002.

Learned counsel for the petitioner has submitted that according to the new structure, there are ten posts of Investigator (earlier know as Junior Investigator) in the scale of Rs. 4500-7000. All the employees serving in Regional Offices at Almora and Srinagar are presently serving in the State Planning Commission/Planning Directorate, Uttaranchal and their salary is also drawn against the posts created vide Government Order dated 10.10.2002. A policy decision was taken by the State of Uttaranchal to absorb the employees serving in the Regional Offices in Planning Directorate and a stipulation to this effect has been made in Government Order dated 10.10.2002.

Learned counsel for the petitioner has further submitted that the petitioner is discharging the same duties as are being discharged by a regular incumbent on the said post and there is no difference whatsoever in the nature of duties, responsibilities, working hours etc and the petitioner has served with due honesty and dedication ever since his appointment in the year 1989 and presently also he is serving with same dedication against the post of Investigator in State Planning Commission/Planning Directorate, Uttaranchal. The duties discharged by the petitioner include evaluation of projects funded by the State Government, compilation and tabulation of data, for submitting proposal to the Planning Commission, Government of India, documentation in respect of monthly meetings at the Government level etc.

Learned counsel for the petitioner has submitted that all the superior authorities concerned have recommended the work and performance of the petitioner and he has never given any occasion of complaint to anyone.

It has further been submitted that out of ten posts of Investigator created under the new the structure, none is filled by a regular incumbent and the three persons serving as Investigator including the petitioner are appointed on consolidated salary.

It has further been pointed out that one Sri Ram Singh Mehta was appointed on daily wages without any sanction post in Hill development Department, Regional Office Almora in the years 1990 and his services were thereafter terminated. Pursuant to the order of the Hon'ble Court, he was taken back in the service and vide Government Order dated 29.03.2001 passed by the Government of Uttaranchal, he was granted minimum pay-scale for the post of Typing along with entire arrears of salary with effect form 01.01.1996 and presently he is also serving in State Planning Commission/Planning Directorate Uttaranchal and getting regular salary.

Petitioner has submitted that he is being paid only Rs. 1500/-per month as consolidated salary without any allowances although he is discharging same duties as a regular Investigator. The present pay-scale for the post of Investigator is Rs. 4500-7000 and thus a regular incumbent on the post of Investigator is getting about Rs. 8000/-per month.

Learned counsel for the petitioner has submitted that there are specific directions, circulars and Government Orders for regularizing the services of the employees, who are working on clear vacancies. Government has directed to fill the vacancies in the Hill Development Department vide G.O. dated 08.04.1992. The vacancies are still lying vacant where the petitioner could be accommodated.

The grievance of the petitioner is that he has not been paid his salary w.e.f. 1st October, 1992, but the work was being taken form the respondents by the petitioner upto 31st December,

1994 after that he was restrained form coming on duty w.e.f. 01.12.1995 although the work and posts were still available.. Thereafter the petitioner filed the present writ petition and he is continuously working on the said post till date. the financial grants and budget grants are also available. The services of the petitioner have not been regularized nor he has been paid his salary. His services were orally terminated. Petitioner made repeated representations, but no decision has been made upon the representations till date.

In view of the above, respondents are directed to consider the petitioner to continue on the post of Investigator and also consider for regularization in accordance with the rules concerning Group-C Post.

Consequently, writ petition is allowed.

(Rajesh Tandon, J.)

Dated:17.05.2005

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